THE HON'BLE SRI JUSTICE NOUSHAD ALI

M.A.C.M..A.Nos.8, 47 & 52 OF 2006

COMMON JUDGMENT:

1. These appeals, by the appellant/Insurance Company, arise out of the same accident involving a tractor-cum-trailer bearing registration No.AP21/T/3650/3652 belonging to the second respondent herein. MACMA No.8 of 2006 arises out of the award in M.V.O.P.No.749 of 2003, MACMA No.47 of 2006 arises out of the award in M.V.O.P.No.752 of 2003 and MACMA No.52 of 2006 arises out of the award in M.V.O.P.No.750 of 2003, on the file of the V Additional District Judge (Fast Track Court)-cum-Motor Vehicles Accidents Claims Tribunal, Kurnool.

2. Respondent No.1 in each of the appeal are the claimants. Respondent No.2 is the owner of the offending tractor-trailer. The appellant-Insurance Company in all the appeals is the insurer of the said tractor-trailer.

3. It is the case of the claimants that on 15.04.2003, they went on the tractor-trailer to Tulasapuram village as Hamalies and after unloading Tobacco, when they were returning on the offending vehicle, on account of rash and negligent driving by the driver, the vehicle over turned, due to which, the claimants sustained injuries. They were treated in the Government General Hospital, Kurnool. The claimant in MA CMA No.8 of 2006 (M.V.O.P.No.749/2003) was aged about 16 years and was earning Rs.50/- per day as a coolie. On account of injuries to his legs, he was disabled to work. He therefore, filed the O.P., and sought for compensation for a sum of Rs.50,000/-. On the same facts the claimant in MA CMA No.47 of 2006 (M.V.O.P.No.752/2003) sought for compensation for a sum of Rs.50,000/-, and the claimant in MA CMA No.52 of 2006 (M.V.O.P.No.750/2003) sought for compensation for a

sum of Rs.25,000/-.

4. The second respondent (owner of the offending vehicle) remained ex parte. The appellant-Insurance Company contested the claim. It denied that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. The claimants were put to strict proof that the driver had a valid licence, the vehicle was road worthy, the manner in which the accident occurred and the nature of the injuries, and that the treatment received by the claimants. It was admitted that the offending vehicle was insured with it, but denied its liability on the ground that the claimants were travelling as unauthorized passengers and not covered by the insurance policy.

5. On the aforesaid pleadings, the Tribunal formulated issues - whether the accident occurred due to the rash and negligent driving of the said vehicle by its driver and whether the claimants are entitled for compensation and if so, to what amount and from which respondent.

6. The claimant in MVOP No.749 of 2003, namely, Kuruva Ramudu, who is the father of the deceased, himself was examined as PW.1; the claimants in MVOP Nos.750 of 2003 and 752 of 2003 themselves were examined as PWS.2 and 4. These appeals are not concerned with PW.3-Nagamma, who filed separate MVOP No.751 of 2003 against which no appeal has been filed. The documents, certified copy of F.I.R. in Crime No.48/2003 of Traffic P.S., Kurnool (Ex.A.1); certified copy of charge sheet in Crime No.48 of 2003 of Traffic P.S., Kurnool (EX.A.2); discharge summary card relating to Kuruva Samulu, injured minor petitioner in MVOP No.749 of 2003 (Ex.A.3 & A.4); certified copy of wound certificate of PW.2-Kuruva Pakira (petitioner in MVOP No.750/2003) (Ex.A.5); bunch of medical bills relating to PW.2-Kuruva Pakira (petitioner in MVOP No.750/2003) (Ex.A.6); discharge summary card relating to PW.2 Kuruva Pakira (Petitioner in MVOP No.750 of 2003) (Ex.A.7); certified copy of wound certificate of PW.4-Kuruva Yella Swamy (petitioner in MVOP No.752/2003) (Ex.A.10); and

discharge summary card relating to PW.4-Kuruva Yella Swamy (petitioner in MVOP No.752/2003) (Ex.A.11) respectively were marked. One T.V. Ramulu, who is the Officer of the appellant-Insurance Company, was examined as RW.1 and marked Insurance Policy (Ex.B.1).

7. On a consideration of the evidence on record, the Tribunal awarded compensation of Rs.50,000/- to the claimant in MA CMA No.8 of 2006 (MVOP No.749/2003); Rs.27,000/- to the claimant in MA CMA No.47 of 2006 (MVOP No.752/2003); and Rs.16,000/- to the claimant in MA CMA No.52 of 2006 (MVOP No.750/2003) respectively with interest @ 7% p.a. in all the O.Ps. The O.Ps were decreed against the second respondent owner of the vehicle with due indemnity from the appellant-Insurance Company holding that the Insurance Company is entitled to recover 1/3rd of the total compensation awarded in all the O.Ps., from the owner of the vehicle on the ground that clause (3) of the terms and conditions of Ex.B.1-Insurance policy were violated since some passengers were also travelling in addition to the claimants. The appellant Insurance Company, being aggrieved by the liability fastened on it, filed these appeals.

8. Heard learned counsel appearing for the appellant-Insurance Company. The respondents/claimants are not represented despite service of notice.

9. The learned counsel for the appellant would contend that the claimants are not Hamalies, but they were travelling as unauthorized passengers. They were part of the marriage party, which engaged the offending vehicle. The offending vehicle is not meant for carrying any passengers and Ex.B.1-Insurance policy does not cover any passengers carried in the vehicle. The learned counsel would also contend that if the evidence is properly appreciated, which the Tribunal did not, it would reveal that the claimants were, in fact, passengers but

not coolies. This is the sole and solitary objection raised in these appeals.

10. There being no challenge on the issues relating to negligence and the quantum of compensation awarded and the minority status of claimant in O.P.No.749 of 2003, the only point that arises for consideration in these appeals is whether the claimants were passengers as claimed by the appellant-Insurance Company, or Hamalies as per the claim of the claimants.

11. In the claim petitions, each of the claimants claimed that he is a coolie. It was stated therein that the claimants and other coolies went to Tulasapuram village in order to unload Tobacco from the offending vehicle and after unloading they were retuning to Nannoor village in the said vehicle. It was specifically pleaded that each of the claimant is a coolie and on account of the accident they are unable to work as coolies.

12. PW.1, who is the father of the claimant in MVOP No.749 of 2003, in his evidence, stated that his minor son was a coolie and he along with other coolies went in the offending vehicle and due to the accident he was injured. In the cross-examination by the appellant-Insurance Company, he denied the suggestion that the claimants were going for a marriage function. He reported that he went along with offending vehicle for unloading Tobacco. He also denied the suggestion that he was deposing falsely for claiming compensation.

13. PW.2 himself is the claimant in MVOP No.750/2003 (MACMA No.52 of 2006). He deposed that he and other injured coolies were attending to coolie work on the offending vehicle, and for the purpose of unloading Tobacco they went to the Tulasapuram village and the accident occurred while returning. In the cross-examination he stated that there were six coolies in the trailer and four or six persons of a marriage party also boarded the vehicle. He deposed that he did not know whether the marriage party engaged the vehicle in the return

journey. He has not filed any written proof that he is a Hamali.

14. PW.3 is another claimant in MVOP No.751/2003 (no appeal is filed) deposed on the same lines as PW.2.

15. PW.4 is another claimant in MVOP No.752 of 3003 (MACMA No.47 of 2006) also reiterated the same facts and cross-examined on the same lines.

16. Coming to the documentary evidence, Ex.A.1 is the FIR registered on the complaint lodged by one Madasi Kuruva Yella Sway, which shows that the accident occurred and the claimants suffered injuries. In his statement recorded by the police, the said Kuruva Yella Swamy stated that he is working as tutor in B.C. Hostel in Boddupalle village. On 14.04.2003, he and others went to Tulasapuram village of Kurnool Mandal for attending a marriage. After attending the marriage in the return journey, they travelled in the offending vehicle on 15.04.2003. In that vehicle already some coolies, namely, Kuruva Ramudu S/o. Kishtanna, his wife Malleswari, and Balamma, Mallaiah, Pakira S/o. Suranna, Nagamma W/o. Naganna, Yella Swamy S/o. Yellaiah were already travelling, while the marriage party, along with the said coolies, were also travelling in the said vehicle. The vehicle was driven in a rash and negligent manner and when sudden break was applied, the trailer turned turtle and sustained injuries. The coolies, namely, Pakira, Yella Swami, Nagamma and the son of Kuruva Ramudu (Kuruva Swamulu) and others sustained bleeding injuries. They were all shifted in another jeep to the hospital. To the same effect charge sheet (Ex.A.2) was also filed.

17. From a perusal of the oral and documentary evidence, it is clear that the claimants were coolies. It is therefore, not possible to agree with the contention of the learned counsel that they were travelling as unauthorized passengers.

18. The Senior Assistant working in the office of the appellant-

Insurance Company was examined as RW.1. In his evidence he admitted that the offending vehicle is covered by a valid insurance policy. It is stated that the passengers are not permitted to travel in the offending vehicle and that it was carrying the marriage party consisting of 30 persons, and using the vehicle for carrying a marriage party, is violation of policy conditions. He also stated that the claimants were not coolies but they were travelling as passengers. In the cross-examination, he admitted that he was not an eye witness to the incident and he was deposing based on the records. He also admitted that the marriage party also boarded the vehicle along with the Hamalies and he did not know whether the claimants are Hamalies. He did not doubt the validity of the licence of the driver, which is a non-transport licence.

19. Although the appellant-Insurance Company took the stand that the claimants were unauthorized passengers, but the evidence of RW.1, as stated, does not establish the said fact. Admittedly, RW.1 was not an eyewitness and on the other hand, he did not know whether the claimants are Hamalies or not. No other evidence was adduced by the appellant-Insurance Company to establish the said fact. In the light of these facts, judgment in **M.V. Jayadevappa and another v. Oriental Fire and General Insurance Company**[1], cited by the learned counsel has no application to the instant case.

20. On a thorough examination of the evidence adduced by the claimants vis-à-vis the evidence adduced by the appellant-Insurance Company, it is amply established that the claimants were travelling only as coolies but not as unauthorized passengers. The Tribunal correctly recorded the finding on this issue. There being no dispute as to the coverage of insurance and there being no other dispute, and the finding as arrived at on the only disputed fact, the appeals are liable to be dismissed.

21. Accordingly, these Civil Miscellaneous Appeals are

dismissed. There shall be no order as to costs.

NOUSHAD ALI, J.

27th August, 2010
Js.

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[1] (2004) 13 SCC 43